

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1879 OF 2005

Madhav Narayan Deshpande. ... Petitioner
Versus.
Sou.Jayashri Madhav Deshpande. & anr. ... Respondents.

Shri Avinash Avhad for the Petitioner.

Ms.Rajashree Gadhvi, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 6th Sept., 2005.

P.C.:

1. Heard the learned Advocate for the Petitioner. The learned Advocate for the Petitioner pointed out the Judgment and order dated 22nd June 1992 passed by the learned Judge of the Family Court by which the marriage between the Petitioner and the Respondent No.1 was dissolved by a decree of divorce. He pointed out that the decree is passed on the ground that the Respondent No.1 has deserted the Petitioner for a continuous period of more than two years next before the date of filing of the divorce petition. He submitted that the Application for maintenance under section 125 of the Code of Criminal Procedure, 1973 was belatedly filed by the Respondent No.1-wife by suppressing the Judgment of the Family Court. He pointed out that though the Petitioner did not appear in the said application, he had submitted a letter in the trial Court relying upon the decree of divorce. He submitted that inspite of this position,

the learned Judicial Magistrate First Class granted maintenance of Rs.350/- per month. Thereafter Criminal Revision Application No.49 of 2001 was filed by him for challenging the order of the learned Magistrate. On the basis of the pursis filed by the Petitioner, the said Revision Application was disposed of want of prosecution. The learned Advocate for the Petitioner submitted that the Petitioner in the absence of his Advocate was forced to sign pursis of withdrawal. The Petitioner filed a second Revision Application for challenging the order passed under section 125 of the said Code of 1973 which has been dismissed by the learned Sessions Judge by order dated 8th September 2004. The said Revision Application has been dismissed by holding that the same was not maintainable.

2. The learned Counsel for the Petitioner submitted that in view of the decree of the Family Court, which has attained finality, the Respondent No.1 was not entitled to maintenance under section 125 of the said Code. He submitted that even the original order passed under section 125 is challenged in this petition, which required to be interfered with in view of the decree passed by the Family Court which has attained finality.

3. I have considered the submissions. The present petition is essentially filed under Articles 226 and 227 of the Constitution of India read with section 482 of

the said Code of 1973. It is well settled position of law that the remedy under Articles 226 and 227 is an extra ordinary and discretionary remedy and it is not necessary for this Court to interfere with every order which is stated to be illegal. In the present case the Petitioner has chosen not to appear before the learned Magistrate when Application under section 125 of the said Code was filed by the Respondent No.1. Instead of appearing before the learned Magistrate and contesting the matter, he has chosen to sent a letter to the learned Magistrate pointing out the decree of divorce. After filing the Revision Application, the case of the Petitioner is that he was forced to sign the pursis of withdrawal. The Revision Application was withdrawn on 25th September 2001 by an order passed by the learned Sessions Judge below the Revision Application. It was disposed of on the basis of the pursis filed by the Petitioner. If the Petitioner was really threatened by some one, he could have applied for recall of the order passed on the said Revision Application. Instead of applying for recall of the order, the Petitioner filed a Second Revision which was completely misconceived.

4. The Petitioner has been directed to pay monthly maintenance at the rate of only Rs.350/- per month. The learned Magistrate has found that the Petitioner is an employee of a Cooperative Bank drawing a salary of more than Rs.5000/- per month. No fault can be found with

the order of the Sessions Judge holding that the Second Revision Application was not maintainable. The challenge to the original order under section 125 of the said Code cannot be entertained after the revision application against the said order was withdrawn by the Petitioner.

5. The Petition is devoid of any merit and the same is dismissed.

Judge.